



**FEDERAL ELECTION COMMISSION**  
Washington, DC 20463

**MEMORANDUM**

**TO:** THE COMMISSION  
STAFF DIRECTOR  
GENERAL COUNSEL  
CHIEF COMMUNICATIONS OFFICER  
FEC PRESS OFFICE  
FEC PUBLIC DISCLOSURE

**FROM:** COMMISSION SECRETARY *MWD*

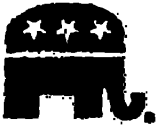
**DATE:** JULY 31, 2007

**SUBJECT:** COMMENT ON DRAFT AO 2007-11  
California Republican Party and  
California Democratic Party

Transmitted herewith is a timely submitted comment from Sean Cairncross, Chief Counsel for the Republican National Committee, regarding the above-captioned matter.

Proposed Advisory Opinion 2007-11 is on the agenda for Wednesday, August 1, 2007.

**Attachment**



**Republican  
National  
Committee**

**Counsel's Office**

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
SECRETARIAT

July 31, 2007

2007 JUL 31 A 11:41

**By Fax**

Honorable Mary Dove, Secretary  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

**Re: The Republican National Committee's Comments on Draft Advisory  
Opinion 2007-11.**

**Dear Madam Secretary:**

The Republican National Committee writes to comment on the Federal Election Commission's (the "Commission") draft advisory opinion 2007-11 ("Draft AO"). The Draft AO responds to the California Republican and Democrat state parties' advisory opinion request seeking guidance on the application of the Federal Election Campaign Act of 1971, as amended (the "Act"), and the Commission's regulations to three types of proposed communications preceding a State party fundraising event that include Federal candidates or officeholders as featured speakers or honored guests. The draft opinion's conclusion – that the appearance of a Federal candidate's or officeholder's name on a pre-event invitation that also includes a request for non-federal funds constitutes an impermissible solicitation by the named Federal candidate or officeholder – is based upon the incorrect premise that such communications constitute solicitations by the Federal candidate or officeholder. Such communications are exempted from the prohibition on such solicitations, and the Draft AO should not be adopted.

First, the statute is clear that Federal candidate or officeholder participation in State, district, or local party fundraising events is permissible. 2 U.S.C. § 441i(e)(3) states that a Federal candidate or officeholder "may attend, speak, or be a featured guest at a fundraising event for a State, district, or local committee of a political party." This is an *exception* to the general prohibition the Bipartisan Campaign Reform Act of 2002 ("BCRA") imposes on Federal candidates and officeholders against their soliciting funds outside the Act's limits and prohibitions.

Second, the Commission's implementing regulations are even clearer. Section 300.64 – the *exception* applicable to Federal candidates and officeholders participating in State, district, and local party fundraising events – plainly states:

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Not authorized by any candidate or candidate's committee.

State, district, or local committees of a political party may advertise, announce or otherwise publicize that a Federal candidate or individual holding federal office will attend, speak, or be a featured guest at a fundraising event, including, but not limited to, publicizing such appearance in pre-event invitation materials and in other party committee communications. 11 C.F.R. § 300.64(a).

Indeed, Section 300.64 expressly targets the prohibitions imposed by Sections 300.61 and 300.62 – the very provisions the Draft AO relies upon in finding the California State Parties' proposed communications impermissible. Put simply, a Federal candidate's or officeholder's name merely appearing in a state party pre-event communication that also contains a solicitation by the state party for funds outside the Act's limits and prohibitions is exempt from Section 441(e)(1)(A)'s general prohibition.

Moreover, Section 300.64(a)'s exception is not dependent, as the Draft AO suggests, upon the Federal candidate or officeholder's "approval, authorization, or agreement or consent" to be named in a pre-event invitation. Under the Draft AO, state, district, and local parties would be forced to pay the costs of an additional mailing to publicize the appearance of a Federal candidate or officeholder, or be in the nonsensical position of listing the candidate or officeholder without notifying that individual and hoping that they later agree to show up (and even if they did, the state, district, or local party would still be at risk of an enforcement proceeding before the Commission).

Third, the Draft AO incorrectly relies on Advisory Opinions 2003-03 and 2003-36 in support of its conclusions as though the statutory and regulatory exemption for *state, district, and local political parties* does not exist. AOs 2003-03 and 2003-36 related to Federal candidate or officeholder participation in fundraising events for, respectively, non-federal candidates and non-profit organizations. They are inapplicable here; indeed, the very reason Commission guidance was sought in these contexts was to determine if non-federal candidate and non-party committee fundraisers fit within Section 441(e)(3)'s exemption. To now apply these advisory opinions against the state party exemption turns them on their heads.<sup>1</sup>

Fourth, the Draft AO misplaces reliance on the Commission's Explanation and Justification for Candidate Solicitation at State, District, and Local Party Fundraising Events (the "E&J") to buttress its conclusions. The E&J simply states that Federal candidates or officeholders may not serve on the host committee or sign a solicitation for a state party event; actions that are not at issue here. 70 *Fed. Reg.* at 37651. Using the E&J as support for the Draft AO's conclusions not only ignores the express text of the regulatory exemption that includes "publicizing such appearances in pre-event invitation materials," but the express language of the E&J itself. *Id.* at 37653.

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<sup>1</sup> Indeed, the Draft AO appears to revise AOs 2003-03 and 2003-36 by stating that a "disclaimer purporting to limit the Federal Candidate's or officeholder's personal solicitation to funds within the amount limits and source prohibitions that is placed together with a general solicitation of funds outside the Act's limitations and prohibitions is not sufficient." Draft AO at 5. This is further than either of the cited advisory opinions went and constitutes a new position with respect to these opinions.

Finally, the Draft AO cites the Commission's newly revised solicitation definition, 11 C.F.R. § 300.2(m) for support. Few, however, would argue that the communications in question constitute a solicitation by the Federal candidate or officeholder. Such is the reason for the clear and direct statutory and regulatory exemption for exactly this activity.

The Draft AO simply ignores the express statutory and regulatory exemption for Federal candidate and officeholder solicitation at state, district and local party fundraising events. The RNC respectfully requests the Commission to decline to adopt the Draft AO.

Sincerely,

A handwritten signature in black ink, appearing to read "Sean Cairncross". The signature is fluid and cursive, with a large initial "S" and a trailing flourish.

Sean Cairncross  
Chief Counsel  
Republican National Committee